



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for cause, for an Order for the landlord to make repairs to the unit and a Monetary Order to recover the filing fee.

The tenant served the landlord to an adult residing at his property on October 26, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Should the notice to end tenancy for cause be cancelled?

Is the tenant entitled to an order for the Landlord to repair the rental unit?

Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on September 20, 2009. This is a month to month tenancy and rent for this unit is \$850.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$425.00 on September 15, 2009.

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The tenant was served with a One Month Notice to End Tenancy for cause. The reasons given on the notice are that the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The tenant has applied to cancel this Notice. She claims the landlord has never given her a written warning concerning these issues in order for her to deal with them within a given time frame. The tenant also claims the Notice is invalid as the landlord has not dated the notice.

The tenant claims that her daughter has been making some noise when she has been at home fighting with her boyfriend. The tenant has attempted to deal with these issues. The tenant claims the noise in the unit could be caused by the floor of the unit not being laid correctly as there seems to be air pockets under the flooring as she walks across the floor which makes the floor pop. The tenant states that she has apologised to her neighbour who lives beneath her unit and asked him to let her know if there is any other noise from her daughter so she can deal with it. She claims she has heard nothing else from him.

The tenant claims she has tried to take action to prevent these disturbances from occurring and has tried to get her daughter to respect the fact that they have elderly neighbours

The tenant claims that the landlord rented this unit to her knowing that they are a family and the neighbours were seniors. She questions why the landlord rented this unit when there was one available at the time on the ground floor which would have been more suitable to her circumstances.

The landlord claims that the tenants' daughter has caused considerable noise to their neighbours who live to one side of them and beneath them. Last weekend one of the neighbours had to call the police because the noise was very loud with doors slamming, people running back and forth and shouting in the early hours of the morning.

One of the landlords' witnesses who live beneath the tenants unit has complained to the tenant, the landlord and the police. He testifies that the noises started when the tenant moved in with

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her daughter. Almost everyday since that time he has experienced high noise levels with shouting, swearing, running, pounding feet on the floor above him. There has been a disturbance everyday to the extent that the furniture in his unit bounces on the floor, his wife has been woken, and the dishes rattle in the cupboards. The witness claims that there is a cement floor between their units and the noise is so intense that the cement barrier does not dull the noise. He claims the tenant did apologise to him and said she would take care of the problems with her daughter.

The landlords' second witness who lives next door to the tenant testifies that she has experienced loud noise and disturbances both day and night. She has to get up very early for work and the tenants have been playing very loud booming music which disturbs her sleep on a regular basis along with screaming, shouting, swearing and pounding feet on the floor next door. The witness finds these disturbances disturbing and offensive.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. I find the landlord served the tenant with a One Month Notice on a form that is no longer in use and did not date the Notice. Section 52 of the *Act* says that when a landlord serves a Notice it must be on an approved form. I find that the landlord's Notice substantially complies with s. 52 of the *Act* and has not prejudiced the tenant. Although the landlord did not put the date that the notice was issued on the form he did put the date he wanted the notice to take effect down. Consequently, I find that the landlord's Notice is not invalid because it is not on the currently used form or because it did not have a date. However, the landlord would be well advised to use the most current form in the future as failure to do so could prejudice a tenant if they rely on any incorrect information contained in it.

I find that the reasons given in the landlords notice are consistent with the evidence presented at today's hearing. The tenant has not disputed that her daughter has caused a noise disturbance to other tenants. The tenant relies on the fact that she has attempted to deal with

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these issues. However, other tenants do have a right to quiet enjoyment of their residential units and the landlord must take action to protect the rights of all the tenants.

The tenant also argues that the flooring of her rental unit may be a contributing factor to the noise coming from her unit. However, as the landlord and his witnesses have testified that much of the noise is caused by loud music, shouting, slamming doors and swearing I find that this would not be associated with any problems with the flooring of the unit.

The tenant also relies on the fact that the landlord did not give her a written warning of the noise issues. However, the landlord has spoken to the tenant about the problems with her daughter disturbing the other tenants and as such these problems have not only continued but escalated to the point that one of her neighbours had to call the police about the noise coming from her unit and the witnesses testify that the noise problems continue both day and night.

A tenant is responsible for other occupants of the rental unit or their guests and as such I find the tenant has not taken adequate steps to control her daughter and significantly reduce the noise levels and disturbances. I find the disturbances are significant enough to warrant an end to the tenancy. Therefore, the tenants' application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

The landlord has requested an Order of Possession for December 19, 2009.

As an Order of Possession has been issued to the landlord the remainder of the tenants' application seeking an Order for the landlord to carry out repairs to the rental unit is dismissed without leave to reapply.

I also find, as the tenant has not been successful with her application, that she must bear the cost of her filing fee.



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Conclusion

The Tenant's application is dismissed in its entirety. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord to take effect on December 19, 2009. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 08, 2009.

Dispute Resolution Officer